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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/539,458	
	Filing Date	March 30, 2000	
	First Named Inventor	Mark S. Chang et al.	
	Art Unit	2814	
	Examiner Name	Pham, H.	
Total Number of Pages in This Submission	37	Attorney Docket Number	DA01028 (184-P108US)

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DA01028



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Mark S. Chang et al.

Serial No.: 09/539,458

Filed: March 30, 2000

Group Art Unit: 2814

Before the Examiner: Pham, H.

Title: METHOD AND SYSTEM FOR PROVIDING CONTACT TO A FIRST  
POLYSILICON LAYER IN A FLASH MEMORY DEVICE

REPLY BRIEF PURSUANT TO 37 C.F.R. §41.41

Mail Stop AF  
Commissioner for Patents  
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Dear Sir:

This Reply Brief is being submitted in response to the Examiner's Answer dated June 15, 2005, with a two-month statutory period for response set to expire on August 15, 2005.

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CERTIFICATION UNDER 37 C.F.R. §1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on July 15, 2005.

  
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I. RESPONSE TO EXAMINER'S ARGUMENTS IN EXAMINER'S ANSWERA. Examiner not considering Appellants' Amendment mailed on February 8, 2005.

The Examiner had objected to claim 21 as being dependent upon a rejected base claim but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Examiner's Answer, page 2. Appellants amended claim 21 to be written in independent form including all of the limitations of the base claim and any intervening claims in Appellants' 1.116 Reply which was mailed on February 8, 2005. While amendments that are made after the Examiner enters a final rejection are not entered as a matter of right, the amendment to claim 21 placed the application in better form for appeal. 37 C.F.R. §1.116; M.P.E.P. §714.13. When the amendment places the application in better form for appeal, the Examiner may enter such amendment. *Id.* Hence, Appellants believe that the Examiner should have entered the amendment to claim 21. *Id.*

B. Response to Examiner's statement, as discussed on page 6 of the Examiner's Answer, concerning the term "component".

The Examiner has indicated that he gave the term "component" its broadest reasonable interpretation in the context of the appealed claims. While the Examiner states that he gives the term "component" its broadest reasonable interpretation in the context of the appealed claims, Appellants respectfully disagree that the Examiner has provided a reasonable interpretation. The Examiner has not provided any basis in fact and/or technical reasoning to support the Examiner's assertion that elements 57 and 63 of Lee may be interpreted as being a "component" as claimed. *See Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that elements 57 and 63 of Lee may be interpreted as being a "component" as claimed, and that it be so recognized for persons of ordinary skill. *See In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of anticipation in rejecting claim 1. M.P.E.P. §2131.

- C. Response to Examiner's argument, as discussed on pages 7-8 of the Examiner's Answer, that claim 17 is properly rejected under 35 U.S.C. §102(e) as being anticipated by Lee.

The Examiner maintains the rejection of claim 17 under 35 U.S.C. §102(e) as being anticipated by Lee. Examiner's Answer, page 8. In particular, the Examiner maintains that the claim language of "wherein said component is formed from one of said first and said second polysilicon layer" may be interpreted as being formed from both the first and second polysilicon layers of the gate stack. Appellants respectfully traverse. First, the claim language states "one" of the polysilicon layers not "both" of the polysilicon layers. Secondly, by interpreting a component as being formed from both the polysilicon layers (elements 57 and 63), the Examiner is effectively interpreting a gate stack that is formed from layers 57 and 63 to be equivalent to a component. However, Appellants use both the terms "gate stack" and the term "component" in claim 17 and hence, under the rule of claim differentiation, each term must mean something different. In particular, the Appellants claim in claim 17 a gate stack that includes a first and a second polysilicon layer and a component formed from one of these polysilicon layers. Thus, Lee does not disclose all of the limitations of claim 17, and thus Lee does not anticipate claim 17. M.P.E.P. §2131.

- D. Response to Examiner's argument, as discussed on pages 10-11 of the Examiner's Answer, that Appellants' argument that the principle of operation of Lee would change if Lee were to be combined with Ma is inappropriate.

The Examiner asserts that Appellants' argument (pages 7-9 of Appellants' Appeal Brief) that the principle of operation of Lee would change if Lee were to be combined with Ma is inappropriate because the Examiner has rejected claims 2, 3, 19 and 20 under 35 U.S.C. §103(a) instead of under 35 U.S.C. §102. Examiner's Answer, page 10. Appellants respectfully direct the Board's attention to M.P.E.P. §2143.01 which includes a section that indicates that if the proposed modification or combination of prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. M.P.E.P. §2143.01 specifically deals with obviousness rejections and not with anticipation rejections. Hence, Appellants' argument that the principle of operation of Lee would change if Lee were to be combined with Ma is appropriate.

- E. Response to Examiner's assertion, as discussed on page 12 of the Examiner's Answer, that only a portion of a reference (Ma) needs to be considered in an obviousness rejection.

The Examiner asserts that the reference Ma is only "relied upon for the silicide materials, not for the shape or structure of the silicide material." Examiner's Answer, page 12. The Examiner though must consider the prior art reference, Ma, in its entirety (i.e., as a whole) including portions that would lead away from the claimed invention as discussed in Appellants' Appeal Brief. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); M.P.E.P. §2141.02.

- F. Response to Examiner's assertion, as discussed on pages 12-13 of the Examiner's Answer, that the Examiner has provided a reasonable expectation of success in combining Lee with Ma.

As understood by the Appellants, the Examiner makes the argument that since both Lee and Ma teach silicide material that the Examiner has provided a reasonable expectation of success in combining Lee with Ma. Appellants respectfully traverse. Again, as stated above, the Examiner must consider the prior art references, Lee and Ma, in their entirety (i.e., as a whole). *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); M.P.E.P. §2141.02. The Examiner cannot focus on one section of a prior art reference without considering the prior art reference in its entirety. *Id.* Hence, the Examiner must provide a reasonable expectation of success in combining the references, Lee with Ma, as a whole. That is, the Examiner must provide a reasonable expectation of success in combining Lee, that relates to a NOR flash memory device with reduced etching dame (column 1, line 65 – column 2, line 3), with Ma, that relates to a monolithic integrated circuit that performs both radio frequency analog circuit and digital circuit functions (column 1, line 65 – column 2, line 27). Since the Examiner has not provided a reasonable expectation of success in combining Lee with Ma, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2, 3, 19 and 20. M.P.E.P. §2143.02.

- G. Other matters raised by the Examiner.

All other matters raised by the Examiner have been adequately addressed above and in Appellants' Appeal Brief and therefore will not be addressed herein for the sake of brevity.

II. CONCLUSION

For the reasons stated in Appellants' Appeal Brief and noted above, Appellants respectfully assert that the rejections of claims 1-3 and 17-20 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 1-3 and 17-21.

Respectfully submitted,

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